

REFERENCE TITLE: *justices and judges; senate confirmation*

State of Arizona  
Senate  
Forty-ninth Legislature  
First Regular Session  
2009

## **SCR 1007**

Introduced by  
Senators Pearce, Gorman, Gray C, Harper: Allen S, Gould, Verschoor;  
Representative Montenegro

### A CONCURRENT RESOLUTION

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; AMENDING ARTICLE VI,  
SECTIONS 37 AND 38, CONSTITUTION OF ARIZONA; RELATING TO THE JUDICIAL  
DEPARTMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it resolved by the Senate of the State of Arizona, the House of  
2 Representatives concurring:

3       1. Article VI, sections 37 and 38, Constitution of Arizona, are  
4 proposed to be amended as follows if approved by the voters and on  
5 proclamation of the Governor:

6           37. Judicial vacancies and appointments: initial  
7           terms; residence; age

8           Section 37. A. Within sixty days from the occurrence of a  
9           vacancy in the office of a justice or judge of any court of  
10          record, except for vacancies occurring in the office of a judge  
11          of the superior court or a judge of a court of record inferior  
12          to the superior court, the commission on appellate court  
13          appointments, if the vacancy is in the supreme court or an  
14          intermediate appellate court of record, shall submit to the  
15          governor the names of not less than three persons nominated by  
16          it to fill such vacancy, no more than two of whom shall be  
17          members of the same political party unless there are more than  
18          four such nominees, in which event not more than sixty ~~percentum~~  
19          PER CENT of such nominees shall be members of the same political  
20          party.

21           B. Within sixty days from the occurrence of a vacancy in  
22          the office of a judge of the superior court or a judge of a  
23          court of record inferior to the superior court except for  
24          vacancies occurring in the office of a judge of the superior  
25          court or a judge of a court of record inferior to the superior  
26          court in a county having a population of less than two hundred  
27          fifty thousand persons according to the most recent United  
28          States census, the commission on trial court appointments for  
29          the county in which the vacancy occurs shall submit to the  
30          governor the names of not less than three persons nominated by  
31          it to fill such vacancy, no more than two of whom shall be  
32          members of the same political party unless there are more than  
33          four such nominees, in which event no more than sixty per ~~centum~~  
34          CENT of such nominees shall be members of the same political  
35          party. A nominee shall be under sixty-five years of age at the  
36          time ~~his~~ THE NOMINEE'S name is submitted to the governor.  
37          Judges of the superior court shall be subject to retention or  
38          rejection by a vote of the qualified electors of the county from  
39          which they were appointed at the general election in the manner  
40          provided by section 38 of this article.

41           C. A vacancy in the office of a justice or a judge of  
42          such courts of record shall be filled by appointment by the  
43          governor without regard to political affiliation from one of the  
44          nominees whose names shall be submitted to ~~him~~ THE GOVERNOR as  
45          hereinabove provided. THE GOVERNOR SHALL SUBMIT TO THE SENATE

1 FOR CONSENT OF THE SENATE THE NAME OF THE NOMINEE FOR JUSTICE OR  
2 JUDGE. IF THE SENATE CONSENTS TO THE NOMINATION, THE GOVERNOR  
3 SHALL APPOINT THE NOMINEE TO SERVE FOR THE TERM, OR IN THE CASE  
4 OF A VACANCY, FOR THE UNEXPIRED TERM IN WHICH THE VACANCY  
5 OCCURRED. IF THE SENATE REJECTS THE NOMINATION, THE GOVERNOR  
6 SHALL PROMPTLY NOMINATE ANOTHER PERSON WHO MEETS THE  
7 REQUIREMENTS FOR THE OFFICE OF JUSTICE OR JUDGE. A NOMINEE FOR  
8 JUSTICE OR JUDGE SHALL NOT TAKE OFFICE OR DISCHARGE ANY DUTIES  
9 OF THE OFFICE BEFORE OBTAINING THE CONSENT OF THE SENATE. EACH  
10 JUSTICE OR JUDGE WHO IS CONFIRMED BY THE SENATE PURSUANT TO THIS  
11 SECTION SHALL, ON REQUEST OF THE SENATE, BE RECONFIRMED BY THE  
12 SENATE EVERY FOUR YEARS. In making the appointment FOR A  
13 JUSTICE OR JUDGE OF A COURT OF RECORD, the governor shall  
14 consider the diversity of the state's population for an  
15 appellate court appointment and the diversity of the county's  
16 population for a trial court appointment, however the primary  
17 consideration shall be merit. If the governor does not appoint  
18 one of such nominees to fill such vacancy within sixty days  
19 after their names are submitted to the governor by such  
20 commission, the chief justice of the supreme court forthwith  
21 shall appoint on the basis of merit alone without regard to  
22 political affiliation one of such nominees to fill such vacancy.  
23 If such commission does not, within sixty days after such  
24 vacancy occurs, submit the names of nominees as hereinabove  
25 provided, the governor shall have the power to appoint any  
26 qualified person to fill such vacancy at any time thereafter  
27 prior to the time the names of the nominees to fill such vacancy  
28 are submitted to the governor as hereinabove provided. Each  
29 justice or judge so appointed shall initially hold office for a  
30 term ending sixty days following the next regular general  
31 election after the expiration of a term of two years in office.  
32 Thereafter, the terms of justices or judges of the supreme court  
33 and the superior court shall be as provided by this article.

34 D. A person appointed to fill a vacancy on an  
35 intermediate appellate court or another court of record now  
36 existing or hereafter established by law shall have been a  
37 resident of the counties or county in which that vacancy exists  
38 for at least one year ~~prior to his~~ BEFORE THE PERSON'S  
39 appointment, in addition to possessing the other required  
40 qualifications. A nominee shall be under sixty-five years of age  
41 at the time ~~his~~ THE NOMINEE'S name is submitted to the governor.

1           38. Declaration of candidacy: form of judicial  
2           ballot, rejection and retention: failure to  
3           file declaration

4           Section 38. A. A justice or judge of the supreme court or  
5           an intermediate appellate court shall file in the office of the  
6           secretary of state, and a judge of the superior court or other  
7           court of record including such justices or judges who are  
8           holding office as such by election or appointment at the time of  
9           the adoption of this section **OR ANY AMENDMENT TO THIS SECTION**  
10          except for judges of the superior court and other courts of  
11          record inferior to the superior court in counties having a  
12          population of less than two hundred fifty thousand persons,  
13          according to the United States census, shall file in the office  
14          of the clerk of the board of supervisors of the county in which  
15          he regularly sits and resides, not less than sixty nor more than  
16          ninety days **prior to BEFORE** the regular general election next  
17          preceding the expiration of his term of office, a declaration of  
18          his desire to be retained in office, and the secretary of state  
19          shall certify to the several boards of supervisors the  
20          appropriate names of the candidate or candidates appearing on  
21          such declarations filed in his office.

22          B. The name of any justice or judge whose declaration is  
23          filed as provided in this section shall be placed on the  
24          appropriate official ballot at the next regular general election  
25          under a nonpartisan designation and in substantially the  
26          following form:

27           Shall \_\_\_\_\_, (Name of justice or judge) of the  
28          \_\_\_\_\_ court be retained in office? Yes  No  (Mark X  
29          after one).

30          C. If a majority of those voting on the question votes  
31          "No," then, upon the expiration of the term for which such  
32          justice or judge was serving, a vacancy shall exist, which shall  
33          be filled as provided by this article. If a majority of those  
34          voting on the question votes "Yes," such justice or judge shall  
35          remain in office for another term, subject to **SENATE**  
36          **CONFIRMATION EVERY FOUR YEARS ON REQUEST OF THE SENATE AND**  
37          removal as provided by this constitution.

38          D. The votes shall be counted and canvassed and the  
39          result declared as in the case of state and county elections,  
40          whereupon a certificate of retention or rejection of the  
41          incumbent justice or judge shall be delivered to **him THE**  
42          **INCUMBENT** by the secretary of state or the clerk of the board of  
43          supervisors, as the case may be.

1           E. If a justice or judge fails to file a declaration of  
2 ~~his~~ THE JUSTICE'S OR JUDGE'S desire to be retained in office, as  
3 required by this section, ~~then his~~ THE JUSTICE'S OR JUDGE'S  
4 office shall become vacant upon expiration of the term for which  
5 such justice or judge was serving.

6           2. The Secretary of State shall submit this proposition to the voters  
7 at the next general election as provided by article XXI, Constitution of  
8 Arizona.